IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 3884 of 2001

Date of Decision: 07.09.2006

M/s AKM Construction & Engg. Company

...Petitioner

Vs.

Commander Works Engineer, ...Respondent

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.Manohar Lall, Advocate,
for the petitioner.

Mr.Kamal Sehgal, Advocate,
for the respondent.

Vinod K.Sharma,J. (oral)

The petitioner contractor has challenged the order passed by the learned Additional District Judge, Chandigarh, vide which the appeal filed by the Company Works Engineer, Ambala Cantt., was partly

accepted and the award qua the amounts claimed under Claim No.15, 16, 20 and 21 were set aside and qua the other claims the award was made rule of the Court.

The brief facts of the case are that the petitioner herein was allotted the construction work vide contract agreement No. CWE/LAL/16/80-81. The dispute arising out of the said agreement was referred to the Arbitrator for adjudication and the Arbitrator vide award dated 30.4.1992 passed an award in favour of the contractor. The petitioner-contractor filed an application for making the award rule of the court, whereas the respondent Commander Works Engineer filed objections pleading therein that the Arbitrator had ignored the specific provisions of the contract agreement and had awarded the amount in contravention of the accepted conditions of the contract agreement. It was claimed that the Arbitrator had, thus, misconducted himself as well as the proceedings by allowing the various claims illegally and it was prayed that the award be set aside with costs.

The objection petition was contested by the petitioner herein on the ground that the objections were time barred as the award was pronounced on 30.4.1992. It was further claimed that the Arbitrator had not violated any terms and conditions of the contract agreement. Therefore, it was claimed that the Arbitrator had neither misconducted

himself nor the proceedings and dismissal of the objection petition was sought.

On the pleadings of the parties the following issues were framed:

1. Whether the award dated 30.4.92 is liable to be set aside on the grounds mentioned in the objections, as alleged? OPO

2. Whether the said award is liable to make rule of the Court? OPA

3. Relief.

The learned Trial Court decided all the issues in favour of the petitioner-contractor and made the award rule of the court. In appeal learned Additional District Judge set aside the award qua items No. 15, 16, 20 and 21 while qua the other items were upheld.

In order to appreciate the controversy, it will be relevant to reproduce claims awarded in favour of the petitioner under Item No.15, 16, 20 and 21 which read as under:-

15	On account of additional expenditure to reduction in working hours Rs.1,50,000/- (Revised to Rs.1,26,000/-during the hearing) Claim partly established	Rs.80,000/-
16	On account of reimbursement of increased prices of bricks Rs.18,000/- (revised to Rs.67,000/- during hearing) Claim established	Rs.67,000/-
20	Additional expenditure caused on account of disturbed condition in Punjab amounting to accepted risk. Rs.50,000Revised to Rs.1,27,000/- during the hearing) Claim partly established	Rs.60,000/-

21.	Reimbursement of damages suffered on Rs.3,00,000/- on account of damages, breach of contact including delay in handing over the site delay in foundation bearing capacity and foundation design, suspension of work on road formation, abnormal delay in issue of Schedule 'B' stores including steel, bitumen and cement, refusal to issue for steel bars over 16mm dia, delay in placing work order on account of delay in decision of shifting of pipe line through Magazine No.1 difficulties created while issuing of stores, suspension of work on road side drains delay in issue of road roller, delay in deciding of foundation level on 4th Magazine, short supply of water, delay in giving decision regarding levels of roads and culverts for Magazine No.4 delay in payment of final bill and numerous other delays which ultimately resulted in delays in completion of the work. Rs.3,50,000/- (Revised to Rs.6,26,382.66 during hearing) Claim partly established.	Rs.3,00,000/-

Learned lower Appellate Court rejected Claim No.15 being in violation of special condition No.17 of the contract agreement,whereas the claim for reimbursement of increased prices of bricks was set aside to be in violation of condition No.16 of the contract agreement and in support of this finding learned lower Appellate Court relied upon the judgment of Hon'ble Supreme Court in case of **Santokh Singh Arora Vs. Union of India & Ors AIR 1992 SC 1809**.

Claim No.20 was set aside being in violation of special

conditions of contract. It was also held that Claim No.20 was beyond the scope of reference as initially the amount claimed was Rs.50,000/- which was subsequently enhanced to Rs.1,27,000/- out of which the Arbitrator awarded a sum of Rs.60,000/-.

The claim under item No.21 was set aside being violative of condition No.11(C) of the IAFW-2249 on account of prolongation of contract. In order to set aside claim No.21 learned lower Appellate Court relied upon **Union of India Vs. Om Construction Co. 1997 (2) PLR 22; Karam Singh Lall Vs. Union of India 2000 (2) PLR 507 and Deepak Engineering & Construction Co. Vs. Union of India etc.** bearing Civil Revision No. 2000 of 1999 and **Union of India (represented by Garrison Engineer Mamoo, Pathankot Vs. M/s Surinder Kumar Kalra & Co.** bearing Civil Revision No. 1505 of 1999 decided on 14.2.2000. Learned lower Appellate Court also held that the claim awarded was beyond the jurisdiction of the Arbitrator as condition No.11-C of IAFW-2249 debarred any claim in respect of compensation as a result of extension granted under Condition No.11-A and 11-B. Condition No.11-C of the contract agreement reads as under:

> "No claim in respect of compensation or otherwise, howsoever arising, as a result of extensions granted under Conditions (A) and (B) above shall be admitted."

Mr.Manohar Lall, learned counsel for the petitioner challenged the judgment passed by the learned lower Appellate Court by placing reliance on the judgment of Hon'ble Supreme Court in **K.R.Raveendranathan Vs. State of Kerala JT 1998 (8) SC 528** to contend that it was not open to the Court to construe the contract and to hold that the award was contrary to the contract and therefore, beyond the jurisdiction of the Arbitrator. Learned counsel for the petitioner thereafter placed reliance on the judgment of Hon'ble Supreme Court in **Indu Engineering & Textiles Ltd. Vs. Delhi Development Authority 2001 (3) RCR (Civil) 770** to contend that the scope of interference by the Court with an award passed by the Arbitrator is limited only to the grounds mentioned in Section 30 of the Act and therefore, the contention of the learned counsel for the petitioner was that it was for the Arbitrator to construe the effect of the terms of the agreement in the facts and the circumstances of the case and therefore, it was not open to the learned lower Appellate Court to form a different opinion. Learned counsel also placed reliance on the judgment of Hon'ble Supreme Court

in **K.R.Raveendranathan Vs. State of Kerala and another (1996) 10 Supreme Court Cases 35** to contend that as the view taken in **Sudar Trading Co.** as approved in *Hindustan Construction Co.* was in conflict with the view taken in *Associated Engg. Company* the matter has been referred to three judges bench of the Supreme Court.

The main plank of Mr. Manohar Lal, learned counsel for the petitioner was that the order passed by this Court in **CR No.2781 of 1998 Karam Singh Lall Vs. Union of India** has been set aside by the Hon'ble Supreme Court and therefore, this revision deserves to be allowed. It would be appropriate to reproduce the judgment passed by Hon'ble Supreme Court in CA No. 6720 of 2001 in which reliance has been placed by the learned counsel for the petitioner which reads as under:

> " Leave granted.
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> In respect of a contract entered into by the appellant and respondent Nos. 1 and 2 certain disputes having arisen the arbitration clause was invoked and the disputes were referred to Col. P.K.Garg for adjudication. He published an award on 13.6.1985. Thereafter, when the same was to be made a decree of the court respondent Nos. 1 and 2

contested the same in the court of the learned Senior Sub Judge and the learned Senior Sub Judge, by an order made on 9.4.1991, remitted the award to the sole arbitrator for reconsideration. Thereafter the same was referred to another sole arbitrator Col. M.S.Sahota to adjudicate the said disputes. Col. M.S.Sahota re-examined the matters and gave his award on 3.2.1994 on various items including a sum of Rs.916.26p under claim No.4 for unlawful recovery of compensation and another sum of Rs.32,907/- under claim No.5 as damages due to prolongation of the work on account of default on the part of the department, in respect of which certain objections were raised by the respondent when the said award was sought to be made the decree of the court. The learned Civil Judge (Senior Division), Amritsar who heard the objections, rejected the same and made the award the rule of the court. He also granted interest at the rate of 6% from the date of award till the realisation of the amount on the application moved by the appellant under Section 29 of the Arbitration Act, 1940. The matter was carried in appeal by the respondents to the Additional District

Judge,who partly allowed the same and set aside the award of arbitrator with reference to claim No.5 amounting to Rs.32,907/-. In reaching this conclusion, the learned Additional District Judge adverted to clause 11 of the contract. Thereafter, a revision petition was filed before the High Court of Punjab and Haryana which dismissed the revision petition on the ground that the arbitrator has mis-construed clause 11 (C) of the contract which does not permit for grant of compensation and the arbitrator exceeded his jurisdiction and thereby misconducted himself. Hence, this appeal by special leave.

In the present case, the award made by the arbitrator is not a speaking award. The arbitrator after setting out the preliminary information in regard to reference, stated that he heard and examined the matter and made the final award. He referred to the claim in the award then he has passed but no reasons were set out in the award.

In respect of a non-speaking award the scope of interference is very limited. The court in dealing with an application to set aside such an award is not to consider whether the view of the arbitrator on the reference was

justified or not. The Arbitrator's adjudication is generally considered binding between the parties, for he is a tribunal selected by them and the power of the court to set aside the award is restricted to cases set out in Section 30 of the Arbitration Act. It is not open to the court to speculate where no reasons are given by the arbitrator as to what prompted him in reaching his conclusion. On the assumption that the arbitrator must have arrived at his conclusion by certain process of reasoning the court cannot proceed to determine whether the conclusion is right or not. It is not open to the court to attempt to probe into mental process by which the arbitrator reaches his conclusion where it is not disclosed by the terms of his award.

In the present case, when the basis upon which the arbitrator reaches his conclusion is not stated but awards the two items, to which we have referred to, is difficult to discern particularly when the claim is for a sum of Rs.81,365/- and the award made is only to the extent of Rs.32,907, we cannot find the reasons for the same.

In that view of the matter, we think the High Court

and the Additional District Judge did not appreciate the matter in the proper perspective and interfered with the award which was made the rule of the court by the learned Civil Judge (Senior Division). Therefore, the orders made by the High Court and that of the learned Additional District Judge are set aside and the order made by the learned Civil Judge (Senior Division) is restored.

The appeal is allowed accordingly. No costs."

Learned counsel for the petitioner also placed reliance on the judgment of Hon'ble Supreme Court in **Hindustan Construction Co. Ltd. Vs. State of Jammu and Kashmir AIR 1992 SC 2192** to contend that when the award is a non-speaking award, the Arbitrator is not shown to have exceeded his jurisdiction to travel beyond the contract. The award could not be set aside on the ground of error apparent on the face of the award.

Learned counsel for the petitioner also placed reliance on the judgment of Hon'ble Supreme Court in the case of **Inder Sain Mittal Vs. Housing Board, Haryana and others AIR 2002 SC 1157** to contend that the party who acquiesced to the invalidity by his conduct by participating in proceedings and taking chances therein cannot

thereafter object to the award when it goes against him. Finally, learned counsel for the petitioner placed reliance on the judgment of Hon'ble Supreme Court in **Shyama Charan Agarwala & Sons Vs. Union of India 1999 (1) Arbitration Law Reporter 699** to contend that a similar decision of Bombay High Court reported in **1999 (1) Arbitration Law Reporter 483** was set aside by Hon'ble Supreme Court by relying upon the judgment in the case of **K.R.Raveendranathan Vs. State of Kerala** (supra) and therefore,the impugned award is liable to be set aside.

On the other hand, Mr. Kamal Sehgal, learned counsel appearing on behalf of the respondent in support of the order passed by the learned lower Appellate Court placed reliance on the judgment of Hon'ble Supreme court in the case of **State of Rajasthan Vs. Nav Bharat Construction Co. (2006) 1 Supreme Court Cases 86** to contend that in guise of doing justice the Arbitrator cannot make an award contrary to the terms of the contract and in case he does so he will have misconducted himself. The contention of the learned counsel for the respondent was that it is only in case the terms of the contract are ambiguous then the arbitrator can give his own interpretation to such terms. However, in case it is clear and unambiguous then he was bound by the terms of the agreement as he is creation of the contract. Learned

counsel for the respondent thereafter placed reliance on the judgment of this Court in the case of **Union of India Vs. M/s Om Construction Company (1997-2) PLR 92** to contend that learned Additional District Judge was right in setting aside particular items as the amount awarded for prolongation of the contract was specifically barred and therefore, learned lower Appellate Court was right in setting aside the impugned part of the claim which was against the specific terms of the contract.

Learned counsel for the respondent, thereafter placed reliance on the judgment of Hon'ble Supreme Court in **Associated Engineering Co. Vs. Government of Andhra Pradesh and another AIR 1992 SC 232** to contend that where it is apparent not by construction of the contract but by merely looking at the contract that the arbitrator travelled totally outside the permissible territory and thus exceeded his jurisdiction in making the award, it is an error going to the root of his jurisdiction. Thus, the contention of the learned counsel for the respondent was that in the present the mere reading of the claim set aside by the learned lower Appellate Court would show that the Arbitrator had travelled beyond the terms of the contract and therefore, no fault could be found with the said judgment.

Learned counsel for the respondent thereafter placed

reliance on the judgment of Hon'ble Supreme Court in **V.G.George Vs. Indian Rare Earths Ltd. And another (1999) 3 Supreme Court Cases 762** to contend that where the amount awarded by the Arbitrator was beyond the scope of the agreement entered into between the parties such award cannot be sustained as it has to be held that the Arbitrator misconducted himself.

Learned counsel for the respondent placed reliance on the judgment of Hon'ble Supreme Court in **General Manager, Northern Railway and another Vs. Sarvesh Chopra (2002) 4 Supreme Court Cases 45** to contend that excepted matters cannot be subject-matter of arbitration between the parties and incase any award is given on that matter, the same has to be held to be beyond the powers of the Arbitrator. Learned counsel for the respondent, thereafter, placed reliance on the judgment of Hon'ble Supreme Court in **Steel Authority of India Ltd. Vs. J.C.Budharaja, Government and Mining Contractor 1999 (4) RCR (Civil) 141** to contend that it was not open to the Arbitrator to ignore the conditions which were binding on the parties. The contention of the learned counsel for the petitioner was that in case the Arbitrator ignores such prohibition clauses and award the claim then he acts in manifest disregard of the contract and therefore, such claims have to be

held to be beyond his jurisdiction. Learned counsel for the respondents thereafter placed reliance on the judgment of this Court in **CR No.4064 of 2001 Jaswant Singh Vs. Union of India & Ors.** Decided on 4.10.2002 to contend that under similar circumstances the order of the Appellate Authority was upheld by this Curt and the revision petition was dismissed.

Learned counsel for the respondent also placed reliance on the judgment of this Curt in **CR No. 1989 of 2002 Union of India Vs. M/s Pavani Civil Contractors (P) Limited and Anr** decided on 16.11.2002 and **Civil Revision No.2552 of 2001 M/s H.P. Construction Vs. Union of India** decided on 5.5.2003.

Learned counsel for the respondent also relied upon the judgment of this Court in CR No.2126 of 2000 **Union of India Vs. M/s Shibbo Mal and sons** decided on 20.11.2002 in support of his contention and also brought to the notice of this Court that the Hon'ble Supreme Court Special Leave Application No.10463 of 2003 against this order was dismissed by Hon'ble Supreme Court.

I have considered the respective contentions of the learned counsel for the parties and find that there is no dispute that the Arbitrator is not competent to travel beyond the terms of the agreement

ad in case an award is passed against specific terms of the contract then it has to be held that the Arbitrator has misconducted himself and travelled beyond his jurisdiction and the said award is liable to be set aside.

It also cannot be disputed that the Arbitrator being creation of the contractor is bound by the terms of the contract and has to decide the dispute referred to him in terms of the agreement executed between the parties. However, if the terms are not clear or are ambiguous then it is open to the Arbitrator to give his own interpretation, which cannot be the subject-matter of challenge before the Court as the Court is not competent to form its own independent opinion to that of the Arbitrator. However, in the present case no such situation arises.

On consideration of arguments of the respective parties, I find no force in the contention raised by the learned counsel for the petitioner. In the present case learned lower Appellate Court has not given any construction to the terms of the contract which may be different from that of the Arbitrator but has merely considered that the claim set aside by the learned lower Appellate Court were in fact contrary to the specific terms of the agreement executed between the parties.

The next contention of the learned counsel for the petitioner

that learned lower Appellate Court could only set aside the award on the ground mentioned in Section 30 is also of no avail as misconduct by the Arbitrator as well as taking decision beyond the scope of reference are governed under Section 30 of the Arbitration Act, 1940 and therefore, no fault could be found with the order passed by the learned lower Appellate Court on this ground also.

The strong reliance placed by the learned counsel for the petitioner on the judgment of Hon'ble Supreme Court in **Karam Singh Lall Vs. Union of India** (supra) is also of no help to him. The Hon'ble Supreme Court in the said case has accepted the appeal only on the ground that in case of a non-speaking award it was not open to the Court to set aside such an award on the ground whether the view of the Arbitrator on the reference was justified or not. Hon'ble Supreme Court has been pleased to hold that it was not open for the Court to speculate where no reasons are given by the Arbitrator as to which prompted him to reach his conclusion on the assumption that the Arbitrator must have arrived at his conclusion by certain process of reasoning and the court cannot proceed to determine whether the conclusion is right or not. Hon'ble Supreme Court further held that it was not open to the Court to attempt to probe into the mental process by which the arbitrator reached his conclusion where it was not disclosed by the terms of the award. No

such situation arises in the present case.

In the present case though the award is a non-speaking award but it would be seen that under Clause 15 the additional expenditure due to reduction in working hours has been allowed which was contrary to special condition No.17 of the contract agreement wherein it was held that nothing extra was permissible to the contractor for any men hours lost by the contractor.

Similarly claim No.16 prima facie shows that amount of Rs.67,000/- was awarded to the contractor on account of reimbursement of increased prices of bricks. This claim was also in violation of special condition No.16 of the contract agreement wherein it was provided that no increase in rate of bricks and bricks tiles even though the same was caused by an act of legislation/Government order were admissible. Therefore, the learned lower Appellate Court has rightly placed reliance on the judgment of Hon'ble Supreme Court in **Santokh Singh Arora Vs. Union of India & Ors** (supra) to reject this claim.

Claim No.20 again was on account of additional expenditure caused on account of disturbed condition in Punjab. This again was in violation of condition No.1 (P) of IAFW-2249. Similarly, claim No.21 was on account of prolongation of contract period which was barred under section 11 (C) of the Contract.

Thus, it would be seen that in the present case there was an error apparent on the face of the record and merely by looking at the claims awarded it can be seen that these were contrary to the specific terms of the agreement and the Court below has not given any interpretation or taken a different view from that of the Arbitrator to reject the claim. The view taken by the learned lower appellate Court finds support from the authorities relied upon by the learned counsel for the respondent.

In view of what has been stated above, I find no merit in the present revision petition and the same is accordingly dismissed with no order as to costs.

(Vinod K.Sharma)
Judge

September 07 ,2006
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